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Supreme Court, U.S.
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No.

In The
Supreme Court of the United States

WILLIAM M. WINDSOR,
Petitioner
v.

JUDGE ORINDA D. EVANS, Appellee
MAID OF THE MIST CORPORATION and
MAID OF THE MIST STEAMBOAT COMPANY, LTD.,
Respondents

On Petition for Writ of Certiorari
To The United States Court of Appeals for The Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

There is no legal or factual basis whatsoever for the decisions of the lower courts in this matter. These rulings were issued for corrupt reasons. Many of the judges in the Northern District of Georgia and the Eleventh Circuit are corrupt and violate laws and rules, as they have done in this case. Then Supreme Court must recognize this Petition as one of the most serious matters ever presented to this Court.

The key questions are:

1. Whether federal courts must be stopped from operating corruptly and ignoring all laws, rules, and facts.

2. Whether the Supreme Court is prepared to declare the Constitution and its amendments null and void.

The Petitioner is not as crazy pro se litigant. He is a 61-year-old corporate executive with an exemplary business and personal background. This Court has likely never had such issues presented before as the Petitioner has learned that attorneys will not handle such matters due to fear of reprisals from the federal judges in Atlanta, Georgia. This Court MUST investigate!

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6 Petitioner states the following:

This petition is filed on behalf of an individual.

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OPINION BELOW

The opinion of the Eleventh Circuit Court of Appeals on the Appeal of William M. Windsor ("Windsor") is provided in the Appendix to the Petition ("Pet. App.") at 69. The Eleventh Circuit order awarding sanctions is provided at Pet. App. 13, and the order on the motion for reconsideration is at Pet. App. 6. The District Court's opinion of June 30, 2009, is provided at Pet. App. 171.

JURISDICTION

The Court of Appeals entered its judgment on February 25, 2010. A ruling on a motion for reconsideration was entered on June 28, 2010. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTES INVOLVED

This case involves Federal Rules of Appellate Procedure Rule 38 and Eleventh Circuit Local Rule 27-4, the United States Constitution and its Amendments, and the Code of Judicial Conduct.

STATEMENT OF THE CASE

A. Jurisdiction Below

The United States District Court for the Northern District of Georgia had subject matter jurisdiction over this matter pursuant to 28 U.S.C. §1331, which confers original jurisdiction for actions arising under the laws of the United States and 28 U.S.C. § 1367.

The United States Court of Appeals for the Eleventh Circuit had jurisdiction pursuant to 28 U.S.C.A.§1291 as an appeal of final decisions of the United Stated District Court for the Northern District of Georgia.

B. Factual Background

On May 18, 2009, Windsor served a subpoena for the deposition of Judge Orinda D. Evans ("Judge Evans") in Civil Action No. 1:06-CV-0714-ODE ("MIST-1"). (MIST-1 Doc.389.) On June 3, 2009, Judge Evans filed an Emergency Motion to Quash Subpoena. [Depo-Doc.1.) On June 8, 2009, Judge William S. Duffey ("Judge Duffey") issued a stay on the subpoena. (Pet. App. 180.) This created a new civil action.[1]

The primary purpose of the subpoena to Judge Evans was to obtain information about two contracts filed under seal in Northern District of Georgia Civil Action 1-06-CV-0714-ODE ("MIST-1"). Windsor began

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[1] Civil Action No. 1:09-CV-01543-WSD ("Depo Doc"), which was originally numbered 1:09-MI-0220-WSD-WEJ.

efforts to obtain the contracts between the Plaintiffs and The Niagara Parks Commission and New York State Parks on November 29, 2005 with a Request for Production of Documents. Windsor tried to obtain the documents through various discovery efforts throughout 2006. At a hearing in chambers on February 2, 2007, Judge Evans ordered the Plaintiffs to produce the documents for an in camera inspection. [MIST-1 Doc.174.] On February 15, 2007, Plaintiffs filed documents under seal. [MIST-1 Doc.168.] On April 20, 2007, Judge Evans issued an Order stating that "Production is not warranted." [MIST-1 Doc. 209, P.9 Lines 21-23.]

In March 2009, Windsor obtained the documents through legal actions in Ontario and New York. Windsor immediately realized that these contracts were vitally important to the Defendants' case in MIST-1. In April 2009, Windsor filed a motion under FRCP Rule 60(b) to have MIST-1 reopened due to, among other things, the discovery of this new evidence and the need to see what was filed under seal. [MIST-1 Doc.361, 362.] Windsor suspected fraud.

On May 18, 2009, Windsor had a subpoena served to take the deposition of Judge Evans. (MIST-1 Doc.388, 389.)

On June 3, 2009, Judge Evans filed an Emergency Motion to Quash Subpoena. [Depo-Action-Doc.1.) On June 4, 2009, the Plaintiffs filed a Motion for Joinder to "expressly adopt" the Motion of Judge Evans. [Depo-Action-Doc.3.] On June 10, 2009, Judge Evans filed a Motion to Supplement Emergency Motion to Quash Subpoena. (Depo-Action-Doc.8.) On June 18, 2009,

Windsor filed a Motion for Reconsideration or Revision of Order Staying Case. [Depo-Action-Doc.15.] On June 26, 2009, Judge Evans filed a Reply. [Depo-Action-Doc.29.] On June 30, 2009, Judge Duffey issued an Order Granting Motion to Quash (Pet. App. 171.)

On July 10, 2009, Windsor filed a Motion for Reconsideration. (Depo-Action-Doc.34.) On July 22, 2009, Judge Evans filed a Response to Motion for Reconsideration and Response to Motion for Change of Venue. (Depo-Action-Doc.38-39.) On July 23, 2009, the Plaintiffs filed a Motion for Joinder to "expressly adopt" the Responses of Judge Evans. [Depo-Action-Doc.40, 41.]

On September 3, 2009, Judge Duffey issued an Order denying Motion for Reconsideration and Motion to Change Venue. (Depo-Action-Doc.42.) On September 15, 2009, Windsor filed a Notice of Appeal. (Depo-Action-Doc. 44.)

NONE of the motions, responses, and replies filed in the Depo Action by Judge Evans or the Plaintiffs called Windsor's efforts frivolous or sought sanctions of any type.

On September 18, 2009, Windsor served Judge Evans with a subpoena compelling production of the documents. [MIST-1 Doc.548.] Judge Evans refused to comply with the subpoena; she simply ignored it – never filed a motion to quash or anything. On September 25, 2009, Windsor filed a motion for the District Court to lift the seal. [MIST-1 Doc. 561.] On October 13, 2009, Plaintiffs filed a Response in Opposition to Windsor's motion for the court to lift the seal. [MIST-1 Doc. 573.]

On October 26, 2009, Windsor filed a Reply to Plaintiffs Response in Opposition to Windsor's motion for the court to lift the seal. [MIST-1 Doc. 583.] On December 7, 2009, Windsor filed an Emergency Motion to Compel Production of Documents by Subpoena by Judge Evans pursuant to FRCP Rule 45(a)(1)(D) and Rule 45(e). [MIST-1_Doc.675.]

There is no legal justification whatsoever to keep these documents under seal. The documents are publicly available now through the governments of Ontario and New York. The only question is whether fraud upon the court was committed. If fraud upon the court was not committed, Judge Evans and the Plaintiffs would have had no reason to have fought every attempt to get these documents produced or the seal lifted.

On December 22, 2009, Judge Evans entered an order denying every motion filed by Windsor between May 22, 2009 and December 22, 2009 ("Mega Order"). [MIST-1 Doc.723.] The Mega Order included an order refusing to lift the seal and dismissing a motion to compel Judge Evans to produce the two documents that she conceals under seal.

On February 25, 2010, Eleventh Circuit Judges Barkett, Hull, and Carnes issued an Order denying Windsor's appeal of the order to quash the subpoena. (See Appendix hereto.) The Order says: "we sua sponte DISMISS this appeal AS FRIVOLOUS AS BRIEFED." The Order also says Rule 38 sanctions are appropriate against pro se Windsor.

On July 23, 2010, Windsor filed a Motion for Extension of Time to file Petition for Writ of Certiorari with The Supreme Court.

On July 27, 2010, Justice Thomas extended the time for filing this Petition. (Pet. App. 5.)

On September 7, 2010, Justice Thomas extended the time to and including September 23, 2010. (Pet. App. 4.)

REASONS FOR GRANTING THE PETITION

I. THIS CASE PRESENTS AN ISSUE OF VITAL IMPORTANCE TO ALL CITIZENS.

The citizens of the United States expect and deserve a fair trial. They expect and deserve honesty and fairness from judges. They believe courts issue carefully-considered opinions that explain why their decisions are justified. Citizens do not expect that one party can lie continually in court and get away with it. Citizens do not expect that judges may violate the rules and criminal statutes as part of a scheme to cheat a litigant. This is precisely what is happening in this case.

The Constitution allegedly guarantees citizens a fair and impartial judge. The Eleventh Circuit and the Northern District of Georgia have not protected this guarantee. (***Liteky v U.S.***, 510 US 540 (1994). They have completely and totally disregarded this guarantee.

Currently, no citizen can feel that there is anything but corruption in the federal courts in Atlanta, Georgia. The Supreme Court is the only hope to rectify this as all government officials have ignored the issue.

II. SUA SPONTE DISMISSALS WITHOUT AN EXPLANATION DENY DUE PROCESS.

"...we DISMISS this appeal AS FRIVOLOUS sua sponte" is not fair, and it denies due process.

This Court expressed on October 20, 2009 that circuit courts err in disposing of claims without

explanation of any sort." (*Corcoran v. Levenhagen*, 558 U.S. ___ (2009), (08-10495).)

The Eleventh Circuit provided NO explanation of any type in its Order of February 25, 2010 (Pet. App. 69). The Eleventh Circuit said Windsor's appeal was frivolous while completely ignoring the nine errors of law and six errors of fact presented by Windsor. (Pet.App.73.)

If the Eleventh Circuit has an explanation for how the appeal could be considered frivolous, the Petitioner should have been afforded the due process right to see what they had to say and respond. The Eleventh Circuit denied the Petitioner a complete record of the case, and the Petitioner was afforded no procedural safeguards.

Sua sponte dismissals are not favored. They are unfair to litigants. (*Franklin v. State of Oregon, State Welfare Division*, 662 F.2d 1337, 1342 (9th Cir. 1981); *Lewis v. State of New York*, 547 F.2d 4 (2d Cir. 1976).)

The simple truth is that essentially NONE of the rulings of the judges of the Northern District of Georgia and the Eleventh Circuit have been legally valid. Rulings have been solely to protect the corruption and to damage Windsor.

Sua sponte dismissals deny the Petitioner the opportunity to make legal arguments against the dismissal. The prejudice is particularly acute with respect to pro se plaintiffs ... who are generally unskilled in the art of pleading. (*Tingler v. Marshall*, 716 F.2d 1109 (6th Cir. 09/15/1983).)

At a basic level, procedural due process is essentially based on the concept of "fundamental fairness." In 1934, this Court held that due process is violated "if a practice or rule offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental." (*Snyder v. Massachusetts*, 291 U.S. 97, 105 (1934).) (See *Goldberg v. Kelly*, 397 U.S. 254, 267 (1970); *Palko v. Connecticut*, 302 U.S. 319 (1937).)

III. THE ACTIONS OF THE LOWER COURTS VIOLATE BASIC CONSTITUTIONAL RIGHTS.

This Court cannot allow what happened in the underlying case. The rights are as basic as they come.

The Petitioner submits that the lower courts have violated his civil and Constitutional rights. The courts' mistreatment of the Petitioner does not comport with fair procedure and lacks the equality that is required by the Constitution and its amendments. Axe murderers, child molesters, and rapists are given better treatment than the Petitioner. (*Younger v. Gilmore*, 404 U.S. 15 (1971); *Cruz v. Hauck*, 404 U.S. 59 (1971); *Chaffin v. Stynchcombe*, 412 U.S. 17, 34 n. 22 (1973).) Even the student who appealed his $100 traffic ticket to this Court received the courtesy of proper written decisions. (*Clark v. Florida*, 475 U.S. 1134, 1136 (1986).)

There is no evidence that the Eleventh Circuit conducted any review of this appeal whatsoever.

> As said by the Supreme Court in *Berger v. United States*, "* * * the tribunals of the county shall not

only be impartial in the controversies submitted to them but shall give assurance that they are impartial, free, to use the words of the section, from any `bias or prejudice' that might disturb the normal course of impartial judgment." In *In re Murchison*, supra, 349 U.S. 133, 136, 75 S.Ct. 623, 625, 99 L.Ed. 942, the Supreme Court said "Fairness of course requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness."

One of the fundamental rights of a litigant under our judicial system is that he is entitled to a fair trial in a fair tribunal, and that fairness requires an absence of actual bias or prejudice in the trial of the case. If this basic principle is violated, the judgment must be reversed. (*In re Murchison*, supra; *Berger v. United States*, supra; *Knapp v. Kinsey*, 232 F.2d 458, (6th Cir. 1956).) (See also *Walker v. City Of Birmingham*, 388 U.S. 307, 338 (1967) (Mr. Justice Douglas, dissenting); *Joint Anti-Fascist Committee v. McGrath*, 341 U.S. 123, 174 (1951) (Justice Frankfurter, concurring); *Brinkerhoff-Faris Co. v. Hill*, 281 U. S. 673, 281 U. S. 681; *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950); *Goldberg v. Kelly*,, *Fuentes v. Shevin*, 407 U.S. 67 (1972); *Owen v. City Of Independence*, 445 U.S. 622 (1980).)

IV. WINDSOR HAS BEEN DENIED DUE PROCESS.

Due process of law is one of the most deeply rooted principles in American jurisprudence, a legal

concept that ensures the government will respect all legal rights instead of just some or most of those legal rights when the government deprives life, liberty, or property. Due process places limitations on laws and legal proceedings in order to guarantee fundamental fairness, justice, and liberty.

In this civil action, the government has not respected Windsor's legal rights.

The Constitution states only one command twice. The Fifth and Fourteenth Amendments say that no one shall be "deprived of life, liberty or property without due process of law." The central promise is that all levels of government must operate within the law and provide fair procedures.

At a basic level, procedural due process is essentially based on the concept of "fundamental fairness." In 1934, the United States Supreme Court held that due process is violated "if a practice or rule offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental." *(Snyder v. Massachusetts*, 291 U.S. 97, 105 (1934).) As construed by the courts, it includes an individual's right to be adequately notified of charges or proceedings, the opportunity to be heard at these proceedings, and that the person or panel making the final decision over the proceedings be impartial in regards to the matter before them. *(Goldberg v. Kelly*, 397 U.S. 254, 267 (1970).)

In this civil action, Windsor has been denied the right to be heard, and the judges have been totally biased against him.

Courts have viewed the Due Process Clause, and sometimes other clauses of the Constitution, as embracing those fundamental rights that are "implicit in the concept of ordered liberty." (*Palko v. Connecticut*, 302 U.S. 319 (1937).)

The rights at issue are fundamental rights, and the government is prohibited from infringing that right unless the infringement is narrowly tailored to serve a compelling interest. The concept of a "compelling interest" is not well defined, but generally refers to something necessary or crucial, as opposed to something merely preferred. There is no compelling interest to deny a legal entity its day in court.

(See *Anti-Fascist Committee v. McGrath*, 341 U.S. 123, 168 (1951); *The Japanese Immigrant Case*, 189 U.S. 86, 100 -101; *Hagar v. Reclamation District*, 111 U.S. 701, 708.; *Southern R. Co. v. Virginia*, 290 U.S. 190, 199; *Brinkerhoff-Faris Co. v. Hill*, supra, 281 U.S. at 682; *Switchmen's Union v. National Mediation Board*, 320 U.S. 297; *Tutun v. United States*, 270 U.S. 568, 576 , 577; *Pennsylvania R. Co. v. Labor Board*, 261 U.S. 72 . 15 ; *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 551 (dissenting); *Pettit v. Penn*, LaApp., 180 So.2d 66, 69; *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965); *Fuentes v. Shevin*, 407 U.S. 67, 80 -81 (1972); *Goldberg v. Kelly*, 397 U.S. 254, 266 -67 (1970); *Mathews v. Eldridge*, 424 U.S. 319, 343 -45 (1976); *FCC v. WJR*, 337 U.S. 265, 275 -77 (1949).)

"In a government like ours, entirely popular, care should be taken in every part of the system, not only to do right, but to satisfy the community that right is done." (*The Writings and Speeches of Daniel Webster,* 163.)"_ [emphasis added]

The Eleventh Circuit decision is inconsistent with the fundamental principal of due process and violated the Petitioner's Constitutional rights.

The due process violations in this matter include the absolutely improper treatment of the award of sanctions.

V. WINDSOR WAS DENIED A REASONABLE OPPORTUNITY TO OPPOSE SANCTIONS, AND HIS DUE PROCESS RIGHTS WERE OBLITERATED.

There are no page limits on an FRAP 38 "reasonable opportunity to respond." Windsor expressed this to the Court in his opposition. (See Pet.App.16.) But the Eleventh Circuit struck Windsor's response claiming the page count violated a non-existent rule, ignored his motion for a hearing, ignored his financial information showing an inability to pay, and ruled against him.

There is no FRAP rule that allows the Eleventh Circuit to do what it did. And the Eleventh Circuit's actions violate the Constitution, its amendments, and due process.

VI. THE LOWER COURTS DECIDED IMPORTANT QUESTIONS OF FEDERAL LAW IN A WAY THAT CONFLICTS WITH SUPREME COURT DECISIONS.

The Supreme Court has issued a variety of rulings that support the Constitution, its amendments, and due process of law.

Windsor will not take the words to cite cases because nothing is more fundamental than the violations by the lower courts in this matter.

VII. THE LOWER COURTS DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW IN A WAY THAT CONFLICTS WITH ALL OTHER CIRCUITS AND SHOULD BE SETTLED BY THE SUPREME COURT.

The Eleventh Circuit panel issued an order that conflicts with the decisions of the Eleventh Circuit regarding pro se parties. Based upon Windsor's research, pro se parties have never been sanctioned pursuant to FRAP Rule 38 without previously being warned about their improper actions. (See ***Woods v. IRS***, 3 F.3d 403, 404 (Eleventh Cir. 1993) (per curiam); ***Pollinger v. Internal Revenue Service Oversight Board***, No. 09-12295 (Eleventh Cir. 01/15/2010); ***United States v. Morse***, 532 F.3d 1130, 1132-33 (Eleventh Cir. 2008) (per curiam); ***King v. United States***, 789 F.2d 883, 884 (Eleventh Cir. 1986) (per curiam); ***Biermann v. Comm'r***, 769 F.2d 707, 708 (Eleventh Cir. 1985); ***Perkins v. Commissioner of IRS***, No. 07-12689 (Eleventh Cir. 01/09/2008); ***Cargill v. Commissioner of Internal Revenue***, No. 07-14207 (Eleventh Cir. 04/02/2008);

Barrett v. United States, No. 09-15159 (Eleventh Cir. 03/09/2010); *Harris v. United Automobile Insurance Group, Inc.*, 579 F.3d 1227 (Eleventh Cir. 08/18/2009).) This is worthy of Supreme Court consideration because the decision of the panel conflicts with every decision of the Eleventh Circuit.

The panel of the Eleventh Circuit issued an order that conflicts with the decisions of all federal courts regarding pro se parties. Based upon Windsor's research, pro se parties have never been sanctioned in any federal court for a "motion to quash" regarding a "subpoena of judge." (See *Scott v. Burress*, No. 06-13916 (E.D.Mich. 03/03/2008); *Englar v. 41B District Court*, No. 04-CV-73977 (E.D.Mich. 10/29/2009); *Aslani v. Sparrow Health Systems*, No. 1:08-cv-298 (W.D.Mich. 02/18/2010); *United States v. Kaufman*, 980 F. Supp. 1247 (S.D.Fla 08/26/1997); *Sanders v. Agnew*, 306 Fed.Appx. 844 (5th Cir. 01/12/2009); *Ciarlone v. City of Reading*, No. 09-0310 (E.D.Pa. 10/28/2009); *United States v. Harvey*, 544 F. Supp. 189 (S.D.Fla 08/9/1982); *United States v. Anderson*, 560 F.3d 275 (5th Cir. 02/17/2009).) This is worthy of Supreme Court consideration because the decision of the panel conflicts with every other federal court.

The panel of the Eleventh Circuit issued an order that conflicts with the decisions of all federal courts regarding sanctions pursuant to FRAP 38. According to Windsor's research, no party has ever been sanctioned for a frivolous appeal as the result of a motion from a party that was not a party to the subpoena that caused the motion to quash that brought the appeal. The subpoena was for Judge Evans, not the Plaintiffs. Judge Evans filed the motion to quash. The Plaintiffs had no

justification for filing a motion for sanctions when Judge Evans didn't. Awarding costs and expenses under these circumstances is outrageous since the Plaintiffs' participation was completely discretionary. This is worthy of Supreme Court consideration because this decision was a terrible mistake by the panel.

The panel of the Eleventh Circuit issued an Order that ignored the facts. There is no factual basis whatsoever for the orders of the lower courts.

VIII. THE PETITION TO THE ELEVENTH CIRCUIT WAS NOT FRIVOLOUS.

Eleventh Circuit Rule 27-4 defines a frivolous motion:

> "A motion is frivolous if: (a) it is without legal merit and cannot be supported by a reasonable argument for an extension, modification, or reversal of existing law, or the establishment of new law; or (b) it contains assertions of material facts that are false or unsupported by the record; or (c) it is presented for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

The Eleventh Circuit has no factual justification for claiming improper purpose (c. above), so this cannot be claimed as justification for the sua sponte decision.

The Eleventh Circuit has no factual justification for claiming facts were not supported (b. above), so this cannot be claim as the justification for the sua sponte decision.

This means the only possible basis for the sua sponte decision is lack of legal merit (a. above). The Petitioner cited 52 cases, three treatises, one article and six amendments to the Constitution in his Appeal. An additional 31 cases were cited in the motion for reconsideration. The law was studied very carefully.

To be deemed frivolous, a litigant's arguments must truly strike beyond the pale [outside the bounds of morality, good behavior or judgment in civilized company]. (*Washington v. Alaimo,* 934 F. Supp. 1395 (S.D. Ga. 1996).)

The Petitioner searched "frivolous motion" and "frivolous appeal" using VersusLaw.com. The Petitioner's appeal does not meet any of the criteria that the Eleventh Circuit expressed in 58 cases that contained those terms.

It is not frivolous for the Petitioner to claim that neither Judge Evans nor Judge Duffey cited any legal authority for Civil Action 1:09-CV-01543-WSD, the motion by Judge Evans, or the orders by Judge Duffey. Windsor cannot find any rule in the FRCP or any case law to provide a legal basis for a judge to file a motion to quash in a civil action in which she is presiding and has been accused of misconduct. (Pet. App. 114.)

It is not frivolous for the Petitioner to claim that the District Court erred by demonstrating pervasive bias against Windsor. Judge Duffey declared Windsor "scurrilous and irresponsible" because he charged Judge Evans with misconduct and criminal violations. This is bias against Windsor and prejudice for federal judges.

This is extrajudicial bias, and it has been pervasive. (Pet. App. 115.)

It is not frivolous for the Petitioner to claim the District Court erred by making false statements in orders. (Pet. App. 117.)

It is not frivolous for the Petitioner to claim that Judge Duffey erred by encouraging perjury, subornation of perjury, Rule 11 violations, obstruction of justice, dishonest parties, dishonest attorneys, and dishonest judges. (Pet. App. 119.)

It is not frivolous for the Petitioner to claim that Judge Duffey erred by making fact decisions that were contrary to the facts that were before the Court. (Pet. App. 120.)

It is not frivolous for the Petitioner to claim that Judge Duffey committed perjury by making statements in his orders that he knew to be false. (Pet. App. 122.)

It is not frivolous for the Petitioner to claim that Judge Duffey did not have legal justification for issuing the Quash Order or the Reconsideration Order (Pet. App. 180 and 171). (Pet. App. 122.)

It is not frivolous for the Petitioner to claim that Judge Duffey erred by claiming Windsor did not cite errors of law as criteria that would justify reconsideration of the Quash Order. (Pet. App. 123.)

It is not frivolous for the Petitioner to claim that Judge Duffey failed to address that Windsor argued that the Appealed Orders violate the Constitution as the

Deposition is vital to Windsor's legal and Constitutional rights. (Pet. App. 124.)

It is not frivolous for the Petitioner to claim that Judge Duffey failed to address that Windsor argued that the case law cited by Judge Duffey is not applicable to this matter. The Quash Order and thus the Reconsideration Order are not supported by any case law. (Pet. App. 130.)

It is not frivolous for the Petitioner to claim that Judge Duffey failed to address that Windsor argued that the Court must compel Judge Evans' testimony as required by law due to the presence of extreme and extraordinary circumstances in the form of bad and improper behavior. (Pet. App. 131.)

It is not frivolous for the Petitioner to claim that Judge Duffey failed to address that Windsor argued that he had complied with legal requirements of the Federal Judiciary's Subpoena Regulations. (Pet. App. 133.)

It is not frivolous for the Petitioner to claim that Judge Duffey failed to address that Windsor argued that this proceeding is not closed; the subpoena is valid; and the subpoena should not be quashed on that basis. Judge Duffey recited cases submitted by the U.S. Attorney, none of which pertain to the facts in this matter. Judge Duffey ruled motions moot on the basis that "a case the Court already has noted has been appealed, affirmed, and which is over and closed." (Pet. App. 138.)

It is not frivolous for the Petitioner to claim that Judge Duffey failed to address that Windsor argued that

the appealed order should be reversed as Judge Duffey did not enforce the Rules. (Pet. App. 141.)

It is not frivolous for the Petitioner to claim that Judge Duffey failed to address that Windsor argued that this is first and foremost a question of the most basic legal rights. Judge Duffey did not rule on the basis of the motion filed, the case law cited, fundamental legal rights and obligations, and what the law should be. (Pet. App. 144.)

It is not frivolous for the Petitioner to claim that Judge Duffey failed to address that Windsor argued that Judge Duffey has violated Canons 1, 2, 3, 3D(1), 3D(2) of the Code of Judicial Conduct. (Pet. App. 144.)

It is not frivolous for the Petitioner to claim that Judge Duffey failed to address that Windsor argued for extending, modifying, or reversing existing law or establishing new law. (Pet. App. 147.)

It is not frivolous for the Petitioner to claim that Windsor expressed six errors of fact, and these were not addressed by Judge Duffey in the Reconsideration Order. (Pet. App. 148.)

The reasons the Appeal was not frivolous are detailed in the Appellant's Brief (Pet. App. 73), Motion for Hearing (Pet. App. 46), Motion to Vacate Order (Pet. App. 20), and Motion for Reconsideration (Pet. App. 8). Additional detail was provided in Windsor's Opposition to the sanctions award (Pet. App. 16), but it is not reproduced in the Appendix because the Eleventh Circuit refused to file it.

IX. THE FINDING OF A VIOLATION OF FRAP RULE 38 WAS COMPLETELY IMPROPER.

This Appeal did not even involve the Plaintiffs (who were awarded $37,333.67 in attorneys' fees for this "frivolous appeal"). A review of Windsor's Appeal Brief (Pet.App.73) will show that the arguments have nothing to do with the Plaintiffs. The Plaintiffs are only mentioned because of their dishonesty. So, the Plaintiffs had no business in this Appeal.

Windsor is pro se, and sanctions are inappropriate. The District Court never indicated that Windsor's claims were meritless. In neither of the Appealed Orders did Judge Duffey warn Windsor about anything. None of the Appellees indicated that Windsor's claims were meritless or even requested sanctions in the District Court. Windsor has cited many Eleventh Circuit cases including ***Woods v. IRS***, 3 F.3d 403, 404 (Eleventh Cir. 1993) and ***Pollinger v. Internal Revenue Service Oversight Board***, No. 09-12295 (Eleventh Cir. 01/15/2010).

Pro se Windsor spent weeks investigating the subpoena for Judge Evans, his Response to the Motion to Quash, and the Appeal of the rulings on the Motion to Quash. Windsor's research indicated that his actions were absolutely reasonable, objective, and proper before filing. There has been no finding of bad faith, nor can they be. Windsor has done NOTHING FRIVOLOUS!

This Appeal was not taken "in the face of clear, unambiguous, dispositive holdings of this and other appellate courts."

Prior opinions support Windsor's interpretation of the law, so Eleventh Circuit's finding of "frivolous" must be vacated.

> *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412, 421-22 (1978), quoted in *Cordoba v. Dillard's*, 419 F.3d at 1181-82. (*Traffic Sports USA, Inc. v. Federacion Nacional Autonoma De Futbol De Honduras*, No. 08-20228-CIV-LENARD/TORRES (S.D.Fla. 10/31/2008).)

There is no basis whatsoever for such a ruling in this matter as Windsor detailed in his Motion to Vacate Order and Motion for Reconsideration. (Pet.App.20.)

The Eleventh Circuit cited no case law to support the ruling, only one case was cited and erroneously – *Farese v. Scherer*, 342 F.3d 1223 (Eleventh Cir. 08/19/2003). This case DENIED Rule 38 sanctions. Even the *Misabec Mercantile* case cited in the *Farese* opinion DENIED Rule 38 sanctions.

Contrary to the claims of Judge Evans and Judge Duffey, judges are subject to subpoenas and testimony.

> (See *Standard Packaging Corp. v. Curwood*, Inc., 365 F.Supp. 134, 135 (N.D. Ill. 1973)); *United States v. Dowdy*, 440 F. Supp.2d 894, 896 (W.D.W.Va. 1977); *Leber v. Stretton*, 928 A.2d 262, 268 (Pa. Super. 2007) (quoting *Commonwealth v. Vartan*, 733 A.2d 1258, 1264 (Pa. 1999)(citations omitted).)

The facts that Windsor desperately needs are not discoverable through any other witnesses. (See *United*

States v. Roth, 332 F.Supp.2d at 568; *Scott v. Burress*, No. 06-13916 (E.D.Mich. 03/03/2008); 9A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2463.1, (3d ed. 2008) at 501-506; *Englar v. 41B District Court*, No. 04-CV-73977 (E.D.Mich. 10/29/2009); *Aslani v. Sparrow Health Systems*, No. 1:08-cv-298 (W.D.Mich. 02/18/2010).)

Judge Evans enjoys no special status that would allow her to avoid his obligation to provide testimony. (*United States v. Nixon*, 418 U.S. 683, 687-88, 94 S. Ct. 3090, 3097-100, 41 L. Ed. 2d 1039 (1974).) (See also *United States v. Frankenthal*, 582 F.2d 1102 (7th Cir. 08/15/1978); *Dennis v. Sparks*, 449 U.S. 24, 101 S. Ct. 183, 188, 66 L. Ed. 2d 185 (1980); *Elkins v. United States*, 364 U. S. 206, 364 U. S. 234 (1960); *In re Suspension to Practice Before United States District Court of Southern District of Iowa of John D. Randall John D. Randall*, 640 F.2d 898 (8th Cir. 01/21/1981); *United States v. Bryan*, 339 U.S. 323, 331 (1950); 8 J. Wigmore, Evidence § 2192 (McNaughton rev. 1961); 4 The Works of Jeremy Bentham 321 (J. Bowring ed. 1843); *Trammel v. United States*, 100 S. Ct. 906, 445 U.S. 40 (U.S. 02/27/1980); *Herbert v. Lando et al*, 99 S. Ct. 1635, 441 U.S. 153 (U.S. 04/18/1979); *Nero Trading, LLC v. United States, Dep't of the Treasury*, 570 F.3d 1244 (Eleventh Cir. 06/10/2009).)

Judge Duffey incorrectly claimed: "The attempt to now depose Judge Evans...is expressly prohibited by long-standing case law." Judge Duffey then proceeded to recite the cases used by the U.S. Attorney representing Judge Evans. As Windsor noted in Depo-Action-Doc.21, 24, none of these cases are applicable in this case as they all related only to depositions regarding a judge's

mental processes. [Depo-Action-Doc.21_ Dec #35 ¶97-98.] [Depo-Action-Doc.24 -- Dec #34 ¶20-50.]

28 U.S.C. § 604 provides the legal authority for taking the depositions of judges. Section 4(b)(2) of the Subpoena Regulations Adopted by Judicial Conference ("Subpoena Regulations") provides that restrictions on depositions by judges do not apply to "Legal proceedings, arising out of the performance of official duties by federal judicial personnel, in which federal judicial personnel are parties." As Judge Evans was named a "party" in the fraud upon the court in MIST-1, the Subpoena Regulations provide that there are no restrictions.

Windsor made it crystal clear that he does not seek to depose Judge Evans as to her "mental processes." If Judge Duffey wanted to quash this subpoena on the basis that no one may take the deposition of a judge who has violated the law and committed fraud upon the court, Windsor asked that Judge Duffey cite those cases. Judge Duffey did not cite any cases. Windsor's study of law indicates that judges most definitely can be subpoenaed for depositions in situations such as this. [Depo-Action-Doc.34 -- Dec #37_¶24.]

The decision to deny the appeal is an error of law because, as a general rule, any individual competent to be a witness may be compelled to testify as to facts within his or her knowledge that are relevant to a matter before the court. (See ***Blair v. United States***, 250 U.S. 273, 39 S. Ct. 468, 63 L. Ed. 979 (1919); ***Standard Packaging Corp. v. Curwood, Inc.***, 365 F. Supp. 134 (N.D.Ill.1973).)

The only case law cited had to do with seeking a judge's mental impressions. Since Windsor agreed to submit all questions to Judge Duffey for advance approval so he could strike any that he felt sought mental impressions, those cases do not apply. Neither Judge Duffey nor Judge Evans cited any other cases. This Court must show how it was without legal or factual merit for Windsor to claim that all of the case law cited did not apply. This Court will not be able to do so. This Court must show what more a pro se party could have done that Windsor did not do. The Application must be denied, and the Appeal must be reconsidered.

There are many examples of federal district judges giving testimony in the territory of the Eleventh Circuit. (See ***United States v. Jenison***, 485 F. Supp. at 665, eight United States District Judges from the Southern District of Florida testified.... And in ***United States v. Holman***, 510 F. Supp. at 1180, a federal district judge testified ... in the Northern District of Florida. See also ***United States v. Cabrera-Sarmiento***, 533 F. Supp. at 805 n. 2; ***United States v. Breland***, 522 F. Supp. 468, 471-74 (N.D.Ga.1981) (testimony of nine federal district judges).

> "Further, the practice of calling federal judges to testify in these cases has been discussed, and approved sub silentio, on two occasions in the Eleventh Circuit. See ***United States v. Holman***, 680 F.2d at 1357; ***United States v. Perez-Hernandez***, 672 F.2d at 1387-88." (***United States v. Cross***, 708 F.2d 631 (Eleventh Cir. 06/30/1983).)

In the Quash Order (Pet.App.171), Judge Duffey claimed Windsor failed to comply with the requirements of the Subpoena Regulations. This was false. In the Response to the Motion to Quash (Depo-Action-Doc.21, 24), Windsor addressed each of these legal issues and documented exactly what was done. [Depo-Action-Doc.21_P11-15_ Dec #35_¶41-64.] In the Response to the Motion to Quash, Windsor again addressed each of these legal issues and documented exactly what was done. Windsor used the published information of the Judicial Conference as the guide for issuing the subpoena for the deposition. Windsor met all of the regulations to allow this deposition to move forward, and there is no admissible evidence before this Court to the contrary. [Depo-Action-Doc.34 -- Dec #37_¶37.] Judge Duffey failed to address this in the Reconsideration Order. [Depo-Action-Doc.42.]

The Eleventh Circuit was obligated to prove that the 10 Errors of Law cited by Windsor were not arguable. Since judges do not have an immunity regarding depositions; since the only case law cited by the Appellees had to do with mental processes; and since Windsor had agreed to let Judge Duffey approve the deposition questions in advance, there is certainly an "arguable point." Then the Eleventh Circuit would have to show that pro se Windsor, who searched for such cases and did not find any, was frivolously wrong to raise these issues.

There is no way that the Eleventh Circuit could honestly claim that Windsor made arguments that lacked legal merit.

The Plaintiffs have committed fraud upon the courts. The Plaintiffs have committed perjury in filings with the Eleventh Circuit on this Appeal.

> "One of the maxims of equity embodying the principle is that a party seeking redress in a court must not have done any dishonest or unethical act in the transaction upon which he or she maintains the action in equity, since a court of conscience will not grant relief to one guilty of unconscionable conduct, i.e., to one with 'unclean hands.'" [McClintock, *Handbook of the Principles of Equity* §26 (2d ed. 1948).]

The Plaintiffs and their attorneys have committed a massive number of dishonest acts including perjury, obstruction of justice, subornation of perjury, (See MIST-1 Doc. 462, MIST-2 Doc.1.) Windsor detailed the unclean hands of Plaintiffs'Attorneys for the lower courts. The proof is UNCONTROVERTED. The proof is established using citations to the depositions of the Plaintiffs' managers. Judge Evans has ignored and hidden this wrongdoing, but it is real and unbelievable.

> (See *Keystone Driller Co. v. General Excavator Co.*, 290 U.S. 240, 245, 54 S. Ct. 146, 147-48, 78 L. Ed. 293 (1933).) (*Mitchell Bros. Film Group v. Cinema Adult Theater*, 604 F.2d 852, 863 (5th Cir.1979), cert. denied, 445 U.S. 917, 100 S. Ct. 1277, 63 L. Ed. 2d 601 (1980); *Calloway v. Partners National Health Plans*, 986 F.2d 446 (Eleventh Cir. 03/19/1993).) *Peninsula Land Co. v. Howard*, 149 Fla. 772, 6 So.2d 384, 389 (1941). (See also *Bank of Marin v. England*, 385 U.S. 99, 87 S. Ct. 274, 17 L. Ed. 2d 197

(1966); *United States v. Howell*, 425 F.3d 971 (Eleventh Cir. 09/15/2005); *Sullivan v. Houston Independent School District*, 475 F.2d 1071 (5th Cir.), cert. denied, 414 U.S. 1032, 94 S. Ct. 461, 38 L. Ed. 2d 323 (1973).) *Hensel v. Aurilio*, 417 So. 2d 1035, 1038 (Fla.Dist.Ct.App.1982).

The Plaintiffs committed fraud upon the courts and upon Windsor when they swore that documents filed under seal in MIST-1 were confidential between the parties. These documents are what the Motion to Quash and this Appeal are all about. So, not only do the Plaintiffs have dirty hands, their hands are grimy with this Appeal.

As part of the underlying action, the Plaintiffs have had their attorneys sign filings claiming the documents filed under seal represent "proprietary business information." On February 2, 2007, Maid filed "Plaintiffs' Response in Opposition to William M. Windsor's Motion to Compel." [MIST-1 Doc.156.]

An award of sanctions cannot be based upon the FRAP because Windsor filed a bona-fide Appeal. Recovery of costs and expenses is not authorized where the appeal was not frivolous.

The issues raised in the Appeal of the order to quash the subpoena are substantial and real and, whether successful or not, are genuine, bona fide, and not frivolous. That being the case, no award of attorney fees under the "frivolous appeal" sections of the FRAP and Eleventh Circuit Rules can stand in this case.

Windsor is pro se, and sanctions are inappropriate. The Eleventh Circuit says:

> "Generally, sanctions under Fed. R. App. P. 38 ... are inappropriate against a pro se appellant even if the appeal is frivolous. *Woods v. IRS*, 3 F.3d 403, 404 (Eleventh Cir. 1993) (per curiam). [emphasis added.] (See also *Pollinger v. Internal Revenue Service Oversight Board*, No. 09-12295 (Eleventh Cir. 01/15/2010).

The District Court never indicated that Windsor's claims were meritless. They weren't meritless. None of the Appellees indicated that Windsor's claims were meritless or even requested sanctions in the District Court. In neither of the Appealed Orders did Judge Duffey warn Windsor about anything.

> "... we have imposed sanctions on pro se litigants who were warned by the district judge that their claims ... were meritless." *(United States v. Morse*, 532 F.3d 1130, 1132-33 (Eleventh Cir. 2008) (per curiam); *King v. United States*, 789 F.2d 883, 884 (Eleventh Cir. 1986) (per curiam).)

> We have imposed Rule 38 sanctions on a pro se taxpayer after the Tax Court had apprised the taxpayer of the potential consequences of maintaining an appeal based on arguments previously rejected by the court. (*Biermann v. Comm'r*, 769 F.2d 707, 708 (Eleventh Cir. 1985); *Perkins v. Commissioner of IRS*, No. 07-12689 (Eleventh Cir. 01/09/2008).)

The Eleventh Circuit has never previously awarded sanctions in an appeal such as this. In the history of the Eleventh Circuit, a pro se non-attorney

party has never been sanctioned pursuant to FRAP Rule 38 for a frivolous appeal for anything but ridiculous tax protests. There have been 21 pro se parties subject to FRAP Rule 38 sanctions, and 13 were sanctioned. 12 were tax protestors, and one was an attorney who knew better.

> "Generally, sanctions under Fed. R. App. P. 38 and § 1912 are inappropriate against a pro se appellant even if the appeal is frivolous. ***Woods v. IRS***, 3 F.3d 403, 404 (Eleventh Cir. 1993) (per curiam). Nevertheless, we have imposed sanctions on pro se litigants who were warned by the district judge that their claims relating to various tax issues were meritless. While we are reluctant to impose sanctions on pro se litigants, ***Woods v. IRS***, 3 F.3d 403, 404 (Eleventh Cir. 1993), we have imposed sanctions on pro se litigants in certain situations, see ***King v. United States***, 789 F.2d 883, 884 (Eleventh Cir. 1986) (imposing sanctions on a pro se litigant who was warned that his claims were meritless); see also ***Bonfiglio v. Nugent***, 986 F.2d 1391, 1394--94 (Eleventh Cir. 1993) (imposing sanctions on a pro se litigant who was also an attorney); ***Pollard v. Comm'r***, 816 F.2d 603, 605 (Eleventh Cir. 1987) (imposing sanctions on a pro se litigant who had previously brought frivolous tax claims). Because Morse's arguments are frivolous and <u>he had been warned about raising them</u>, we conclude that sanctions are appropriate." (***United States v. Morse***, 532 F.3d 1130 (Eleventh Cir. 06/30/2008).) [<u>emphasis added</u>.]

No one has ever been sanctioned in the Eleventh Circuit pursuant to FRAP Rule 38 for appealing a motion to quash. No one has ever been sanctioned in the Eleventh Circuit pursuant to FRAP Rule 38 in an issue involving a judge's dishonesty.

No one has ever been sanctioned in the United States for attempting to obtain by subpoena lawfully served the documents needed to prove their innocence in a legal action.

There have been only eight (8) efforts to sanction parties pursuant to FRAP Rule 38 for appealing a motion to quash in the 13 federal District Courts. Five pro se parties were sanctioned. Three were tax protestors with ridiculous arguments; one was a con man fleecing people and pulling all types of bankruptcy fraud; and one was an employment claim in which the woman committed obstruction of justice and massive discovery abuse.

In all federal district and appellate courts, there are 29 cases that match a versuslaw.com search of "motion to quash" and "subpoena of judge." 21 of the 29 cases returned by the search terms are not about a motion to quash a subpoena of a judge. Of the eight (8) cases from 1982 to 2010 about a motion to quash a subpoena of a judge, not a single one resulted in sanctions of any type:

> *Scott v. Burress*, No. 06-13916 (E.D.Mich. 03/03/2008); *Englar v. 41B District Court*, No. 04-CV-73977 (E.D.Mich. 10/29/2009); *Aslani v. Sparrow Health Systems*, No. 1:08-cv-298 (W.D.Mich. 02/18/2010); *United States v.*

Kaufman, 980 F. Supp. 1247 (S.D.Fla 08/26/1997); ***Sanders v. Agnew***, 306 Fed.Appx. 844 (5th Cir. 01/12/2009); ***Ciarlone v. City of Reading***, No. 09-0310 (E.D.Pa. 10/28/2009); ***United States v. Harvey***, 544 F. Supp. 189 (S.D.Fla 08/9/1982); ***United States v. Anderson***, 560 F.3d 275 (5th Cir. 02/17/2009).

In six of the eight cases, the subpoena was quashed, and in two of those cases, the Fifth Circuit affirmed the orders to quash. But no sanctions were awarded in any of the eight. Thus, the only precedents applicable to the instant action are that (1) appeals of motions to quash are appropriate, and (2) sanctions on motions to quash and appeals of orders to quash are not appropriate.

In ***Scott v. Burress***, No. 06-13916 (E.D.Mich 03/03/2008), the judge addressed the Constitutiona importance of such a subpoena:

> "The question is this, then: Does the Constitution, in particular the petition clause of the First Amendment, afford someone the right to issue and serve a subpoena on a potential witness in order to present a case for redress from the court...?
>
> "The court believes...that there is such a right to attempt to collect the evidence a litigant needs to bring her case.... From the ex ante perspective of a litigant, he may seek to depose a witness who will not voluntarily come forward. Therefore, the litigant has to bring a subpoena. Unless a court found that the subpoena was issued in bad faith,

> such an effort to develop the factual basis of one's claim should be constitutionally protected. The court denies the motions to dismiss as to [Judge] Burress and Lavan, because Scott's complaint is facially valid."

In *Englar v. 41B District Court*, No. 04-CV-73977 (E.D.Mich. 10/29/2009), the motion to quash the subpoena was denied:

> "Judge Cannon is a crucial witness in this litigation who Plaintiffs contend, through Judge Cannon's affidavits, possesses highly relevant information that is unavailable through other sources. Accordingly, the Court finds that the benefits of compliance weigh heavily in favor of enforcing the subpoena. The Court also finds that Judge Cannon is not entitled to a protective order because any burden caused by the continuation of his deposition would not be 'undue.' IT IS ORDERED that William Cannon's Motion to Quash Subpoena, for Protective Order and for Attorney Fees [docket entry 90] is denied."

The instant matter is the same as *Scott* and *Englar*. The information is available ONLY FROM THE JUDGE!

X. AN AWARD OF SANCTIONS TO THE PLAINTIFFS AND AGAINST WINDSOR VIOLATES THE AMERICAN RULE OF LAW ON SUCH COSTS AND THE ESTABLISHED LEGAL REQUIREMENTS OF INQUIRY BY A LITIGANT.

The American rule of law on the costs of a lawsuit is that each party pays its own expenses. (*Alyeska*

Pipeline Service Co. v. Wilderness Society, 421 U.S. 240 (1975); *Am. Hosp. Ass'n v. Sullivan*, 938 F.2d 216, 219 (D.C. Cir. 1991).) Under the American rule every party — even the party prevailing — must pay its own attorneys' fees.

So, Windsor began his efforts to set aside the judgment in Civil Action No. 1:06-CV-0714-ODE knowing that his responsibility was to make sure that he was not doing anything improper. Windsor has had absolutely no concerns about being found responsible for attorneys' fees. He has devoted 13 months of his life to studying the law and thousands of cases to ensure that he has never done anything that is not supported by the statutes and case law.

FRCP Rule 11(b) provides the guidelines under which Windsor has operated as a pro se party.

Windsor will present overwhelming documentary proof and testimony at the evidentiary hearing to show that he has met his responsibilities under FRAP Rule 38, Eleventh Cir. Rule 39-2, and Eleventh Cir. Rule 27-4.

XI. WINDSOR DID ALL THAT ANY COURT CAN EXPECT OF A PRO SE PARTY.

This Court cannot expect anything more of a pro se party than what Windsor did in this matter.

28 U.S.C. § 1654 gives every American the right to represent themselves in court.

The Constitution provides theoretical protections.

Windsor has spent years of his life studying the law in regard to his efforts to get MIST-1 reopened and the various statutes, rules, and applicable case law regarding every issue thereto. Windsor has never filed anything in the Eleventh Circuit without extensive research. He has never filed anything frivolous. He always has extensive legal and factual justification for everything. Nothing can be totally without merit when a highly intelligent corporate executive like Windsor devotes his time and energy to doing the right thing.

Nothing more could be expected of a pro se party. To inflict sanctions with absolutely no proof of any wrongdoing is a massive abuse of discretion.

XII. MANY OTHER FACTORS BAR AN AWARD OF ATTORNEYS' FEES TO THE PLAINTIFFS.

The Plaintiffs executed a final consent and judgment in the underlying action ("MIST-1") on December 9, 2008 in which they released Windsor from any further liability for attorneys' fees in this case.

Issue Preclusion provides that an issue is precluded (1) if it is identical to an issue actually determined in a prior proceeding (attorneys' fees); (2) the party against whom estoppel is sought was a party to or was in privity with a party to the prior proceeding (Plaintiffs and Windsor were both parties then and still are now); (3) there was a final judgment on the merits in the prior proceeding (December 9, 2008 – MIST-1 Doc.354); and (4) the party against whom the doctrine is asserted (Plaintiffs) had a full and fair opportunity to litigate the issues in the prior proceeding (which they

did). Therefore, "issue preclusion" should negate any award of attorneys' fees to the Plaintiffs.

Collateral estoppel prevents the reargument of a factual or legal issue that has already been determined by a valid judgment in a prior case involving the same parties. (Rule 8 of the Federal Rules of Civil Procedure.)

Estoppel arises where a person has done some act that the policy of the law will not permit him to deny, or where circumstances are such that the law will not permit a certain argument because it would lead to an unjust result.

The Plaintiffs, their attorneys, and Judge Evans have committed fraud and fraud upon the courts.

Fraud bars an award of sanctions to the Plaintiffs. The Plaintiffs filed two documents under seal on February 15, 2007. [MIST-1 Doc.168.] At that time and as part of the Motion to Quash that is the foundation of this appeal, the Plaintiffs' attorneys have claimed that the contracts are confidential, but this is false. The Defendants were denied access to these vitally important documents due to the fraud of the Plaintiffs. The Defendants settled due to this fraud. And this is just a fraction of the fraud that Windsor will prove at the evidentiary hearing.

Good Faith bars an award of sanctions to the Plaintiffs. The Plaintiffs have committed extensive wrongdoing. The Affirmative Defense of Good Faith bars an award of sanctions to the Plaintiffs.

Justification or Necessity bars an award of sanctions to the Plaintiffs. Windsor has one and only one way to obtain these documents. Judge Evans is the only person who has them. No one else has the documents that were filed under seal. Judge Evans is it – the ONLY person who has access to and control of the documents.

Windsor tried every way that he could to get the documents. He had to appeal. It was a necessity.

Windsor has filed a Motion for Production of Documents for In Camera Inspection by the Court. It seeks to have the documents filed under seal in MIST-1 Doc.168 produced to this Court. This Court should then compare the documents under seal with the documents that Windsor has provided for comparison. If they do not match, there was fraud by the Plaintiffs.

Unjust Enrichment bars an award of sanctions to the Plaintiffs. The Plaintiffs executed a final consent and judgment in the underlying action, and they have already received approximately $400,000 and have cost the Defendants over $1,400,000. They accomplished all of this through fraud upon the courts. It will be unjust enrichment for them to receive another cent from their ongoing dishonesty.

XIII. THE LOWER COURTS DISCRIMINATED AGAINST WINDSOR BECAUSE HE IS PRO SE.

Then lower courts discriminated against Windsor because he is pro se and because he has had the audacity to take action against federal judges. The Plaintiffs failed to address this important issue.

XIV. THE LOWER COURTS ARE CORRUPT.

There is nothing wrong with the Appeal Brief. The problem is that Judges Carnes, Barkett, and Hull are corrupt. They don't like it that Windsor is exposing the corruption in the federal court system in Atlanta, so they are taking corrupt action to damage him.

Judge Duffey has similarly acted corruptly to protect his neighbor, Judge Evans.

XV. THIS CASE BEGS FOR THIS COURT TO EXERCISE ITS SUPERVISORY POWERS BECAUSE THE LOWER COURTS HAVE SO FAR DEPARTED FROM AN ACCEPTABLE COURSE OF PROCEEDINGS.

There likely has never been a case like this that was absolutely dominated by dishonest acts by the Plaintiffs, their attorneys, and the judges. Cases such as this never reach the appellate courts because attorneys will not represent a party who is taking on a federal judge. The Petitioner knows; every attorney he contacted refused to become involved due to fear of reprisals from the federal judges in Atlanta.

The Petitioner has reviewed a number of Supreme Court cases on the use of supervisory powers. Surely this is a case where the most basic of rights has been violated and must be addressed.

(See ***McNabb v. United States***, 318 U.S. 332, at 340 (1943); ***Rea v. United States***, 350 U.S. 214, 217 (1956); ***Elkins v. United States***,364 U.S. 206,

222 (1960); ***United States v. Payner***, 447 U.S. 727, 735-736, n. 8 (1980); ***Mesarosh v. United States***, 352 U.S. 1, 9-14 (1956); ***Weeks v. United States***, 232 U.S. 383 (1914); ***United States v. Williams***, 504 U. S. 36, 112 S. Ct. 1735 (U.S. 05/04/1992); ***Cupp v. Naughten***, 414 U.S. 141, 146 (1973); see also ***Barker v. Wingo***, 407 U.S. 514, 530, n. 29 (1972); ***Lehman Brothers v. Schein***, 416 U. S. 386, 393 (1974) (Rehnquist, J., concurring); ***Nguyen v. United States***, 123 S.Ct. 2130, 539 U.S. 69, 156 L.Ed.2d 64 (U.S. 06/09/2003).)

Extraordinary circumstances require that wrongs are righted and that this Court exercise supervisory power. This is one of those cases. ~~The Petitioner has been unable to find any cases that have dishonesty and fraud upon the court of anywhere near this magnitude.~~

CONCLUSION

As distasteful as it will be for this Court to acknowledge corruption and criminal acts with federal judges in Atlanta, Georgia, this Court must do so. To do otherwise will violate every oath that the justices have ever taken.

There is NOTHING whatsoever right with any of the decisions of the district courts and the Eleventh Circuit in this and related matters. The facts are that Windsor has always been totally in the right. The law provides that Windsor should have always prevailed on every meaningful issue. These judges have knowingly violated the law and the rules to protect Judge Orinda D. Evans from criminal prosecution and impeachment. There is nothing legally, ethically, or morally right about what these judges have done.

For all the above reasons, the Petitioner now respectfully prays that this Court grant a Writ for Certiorari to review the judgment and opinions of the Eleventh Circuit.

This Court should ask the House and Senate Judiciary Committees to investigate the federal judiciary in Atlanta.

This Court should remand this matter to a different circuit where Windsor's Constitutional rights might be honored.

